




The Deputy Secretary of Energy
 Washington, DC 20585
 September 26, 2000

MEMORANDUM FOR: DISTRIBUTION

FROM: T. J. GLAUTHIER 

SUBJECT: REQUESTS FOR THE INVOLVEMENT OF THIRD PARTIES
 IN DOE PROGRAMS IN RUSSIA AND OTHER STATES IN
 THE FORMER SOVIET UNION

The Department of Energy has in place several programs that use either prime contracts or subcontracts under management and operating contracts to provide monies to Russian scientific institutes and installations for the employment of Russian scientists in pursuit of peaceful and commercially viable technologies, the maintenance of nuclear power plants, and the maintenance and upgrading of security around nuclear material storage sites. By statutory mandate and in pursuit of most efficiently accomplishing the very important purposes of these programs, the Department and its management and operating contractors have established mechanisms for the administration of payments under these contracts and subcontracts that avoid the imposition of taxes by the governments involved and help ensure that DOE monies are properly utilized. These mechanisms consist of the use of three tax exempt third parties: the International Science and Technology Center (ISTC), the Science and Technology Center in Ukraine (STCU), and the Civilian Research and Development Foundation (CRDF).

Certain of the Russian institutes and installations, under whose auspices the work has been and is being performed and which are the direct beneficiaries of these programs, have urged some of the Department's programs to contract or cause subcontracts to be awarded to other third parties. These other third parties offer no apparent substantive benefit to the accomplishment of DOE's programmatic objectives in those countries and pose risks to the proper and efficient use of DOE's monies. The risks are sufficiently large in the stewardship of public funds and the carrying out of these programs that I am issuing this memorandum with regard to the involvement of third parties other than the ISTC, the STCU, or the CRDF.

Simply put, I see no reason why any DOE program would not take advantage of the administrative capabilities and tax exempt status of the ISTC, the STCU, or the CRDF and want that option to be seriously considered. In any event, the Department will not, and our contracting officers will direct our management and operating contractors that they not, negotiate contract instruments with third parties unless (1) the third party is either the ISTC, the STCU, or the CRDF, or (2) a request for permission to negotiate contract instruments with other third parties is approved by the DOE Procurement Executive or the NNSA Procurement Executive, as appropriate. The request must be concurred in by the cognizant DOE contracting officer and DOE counsel. Such requests for permission must present the facts that purport to make involvement of the proposed third party necessary and assure that controls are in place to cause

the monies involved to be efficiently and effectively put in the hands of the institutes and installations where the work will be performed and scientists who will perform the work. Any such request should also include a discussion of the resulting treatment of taxes by Russia or other state of the Former Soviet Union.

A copy of the December 22, 1999 memorandum on the use of the CRDF payment mechanism is attached for your information. Should you have any questions concerning the matter discussed above, please contact Janet Barys for legal matters at (202) 586-3429, Eileen Malloy for policy matters concerning Russia at (202) 586-8900, and your PSO for matters pertaining to your particular programmatic activity.

It has been determined that a field management council review of this notice is not required.

Thank you

Attachments: 12/22/99 memorandum on IPP payments

cc: Under Secretary Moniz
NNSA Administrator Gordon
Assistant Secretary for Energy Efficiency
And Renewable Energy
Assistant Secretary for Environmental
Management
Assistant Secretary for Environment
Safety and Health
Assistant Secretary for International Affairs
Acting Assistant Secretary for Fossil Energy
Deputy Administrator for Defense Programs
Acting Deputy Administrator for Defense Nuclear Nonproliferation
Director, Office of Civilian Radioactive
Waste Management
Director, Office of Nuclear Energy, Science and Technology
Director, Office of Science
Director, Office of Policy
Director, Office of Management and Administration
General Counsel
Chief Financial Officer
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The Deputy Secretary of Energy

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December 22, 1999

MEMORANDUM FOR DISTRIBUTION

FROM:

T.J. GLAUTHIER

SUBJECT:

Initiatives for Proliferation Prevention Program: Section 3136 of the National Defense Authorization Act for Fiscal Year 2000 and its Effect on Subcontracts with Russian and Ukrainian Institutes in the New Independent States

This provides guidance on the implementation of certain funding limitations relating to the Initiatives for Proliferation Prevention Program ("IPP Program") contained in Section 3136 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65 ("Act") (Attachment 1).

The IPP Program was established in 1994 to employ weapons scientists in the Newly Independent States ("NIS") of Russia, Ukraine, Belarus, and Kazakhstan in the pursuit of science with peaceful technology transfer applications. Up to this point in time, the primary instruments used for accomplishing the program mission have been subcontracts between certain DOE management and operating (M&O) contractors and NIS scientific Institutes ("Institutes").

During the past year, I know all of you involved in the IPP Program have been working hard to improve the management of the Program and to increase the proportion of funds that ultimately reach the scientists and engineers overseas who we are trying to support with this Program. The Secretary and I are pleased with the progress that has been made. I am issuing this memorandum to facilitate implementation of some of these changes, especially regarding taxation.

In addition, Section 3136 of the Act contains a number of restrictions related to the use of appropriated funds for, and the conduct of, the IPP Program. Among those restrictions are (1) a limitation (of not more than 35 percent) on the amount of IPP Program funds available in any fiscal year beyond FY 1999 that DOE national laboratories may use to carry out or provide oversight of activities under the IPP program; (2) a prohibition on the use of IPP Program funds for the payment of any tax or customs duty levied by the government of the Russian Federation; and (3) a requirement that the Secretary of Energy notify congressional defense committees in the event payment of a tax or duty is unavoidable and ensure that sufficient additional funds are provided to the IPP Program to offset the amount of any taxes or duties paid.



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Implementation Guidance:

In order to implement our negotiated changes dealing with taxation and Section 3136 of the Act and maximize the use of IPP Program funds, the following guidance is provided:

- (1) To achieve the 35% limitation in Section 3136 (a)(1) of the Act on the amount of IPP Program funds available after FY 1999 for M&O contractors to carry out or provide oversight of the IPP, DOE is in the process of assuming the prime contracting function from the DOE M&O contractors. As now envisioned, DOE will issue task orders to the Institutes for certain deliverables under the contracts and, since there will be an emphasis in FY 2000 on larger U.S. industry cost-shared projects, it is anticipated that there will be a smaller number of IPP Program projects and contracts than in previous fiscal years. We expect that the focus of the M&O contractors' participation will be on technical design, administration, and acceptance of deliverables under the DOE contracts. Detailed guidance will be provided under separate cover.
- (2) To ensure compliance with the prohibition contained in Section 3136 (a)(6) of the Act on the use of IPP Program funds for Russian taxes and customs duties, DOE is in the process of awarding a "payment services" contract to the U.S. Civilian Research and Development Foundation ("CRDF"), a nonprofit entity that is exempt from taxes and customs duties under Russian Federation law. Additionally, we understand that, although CRDF itself is not tax exempt under Ukrainian law, CRDF has been successful in obtaining exemptions from taxes and duties in Ukraine for projects similar to the IPP Program projects. Accordingly, under the soon-to-be awarded CRDF contract, CRDF will be responsible for making payments to Russian Institutes under existing and prospective subcontracts and contracts. Separate guidance will be provided by the program office as to whether CRDF will be responsible for making payments to Ukrainian institutes under existing and prospective subcontracts and contracts, based on the results of discussions now underway in Kiyiv. Until this separate guidance is provided, national laboratories should be instructed to receive and accept deliverables, and make payments, under existing Ukrainian subcontracts. As a result of this new payment mechanism, cognizant DOE Contracting Officers should direct M&O contractors involved in the IPP Program to make no new payments under their subcontracts with Russian Institutes after September 30, 1999. In the unlikely event that nonpayment would put an M&O contractor in a breach of contract situation, the DOE Contracting Officer should immediately notify William Desmond, the DOE IPP Program Manager, who will coordinate efforts at Headquarters to review payment

alternatives and, if payment is unavoidable, assist in the development of any report to congressional defense committees that may be required under the Act.

- (3) Cognizant DOE Contracting Officers also should direct affected M&O contractors to modify their existing subcontracts with Russian Institutes by incorporating the attached model subcontract clause that authorizes payments to be made to the Institutes by CRDF (Attachment 2). While the M&O contractors will continue to perform the accounting and reporting for their respective subcontracts, they will transmit an advance for the total unpaid balance representing the subcontract value of the outstanding deliverables on the existing subcontracts to the Chief Financial Officer's Capital Accounting Center (CAC). Upon receipt and acceptance of deliverables under the subcontracts, the M&O contractors are to notify the cognizant DOE program manager who in turn will notify the DOE Contracting Officer for the CRDF contract in order to authorize payment by CRDF. Subsequent guidance from the program office will indicate whether this modification will also take place for existing subcontracts with Ukrainian Institutes.

If you have any questions concerning the matters discussed above, please contact James Campbell for financial matters at (202) 586-4490, Robert Webb for procurement matters at (202) 586-8264, and William Desmond for IPP Program matters at (202) 586-1007.

Attachments

cc: Ernest Moniz
Under Secretary
Acting Assistant Secretary
For Defense Programs
Director, Office of Science
Assistant Secretary for Environmental
Management
Assistant Secretary for Energy Efficiency
And Renewable Energy

**Model Clause for Existing Russian Subcontracts
under the Initiatives for Proliferation Prevention (IPP) Program**

Payments for deliverables received and accepted under this subcontract prior to the date of this modification have been made by [the M&O Contractor] and have been credited against the obligations of [the M&O contractor] in accordance with the terms of this subcontract. Effective the date of this modification, payments on behalf of [the M&O Contractor] for deliverables accepted by [the M&O Contractor] under the subcontract are to be made in accordance with the procedures specified in the subcontract by the U.S. Civilian Research and Development Foundation (CRDF), located at 1800 N. Kent Street, Suite 1106, Arlington, Virginia 22209. CRDF will make the specified payments by electronic funds transfer to accounts identified in accordance with the procedures specified in the subcontract. The Institute shall credit each such payment made by CRDF, whether to the Institute or identified scientists, against the obligations of [the M&O contractor] under this subcontract.

The point of contact for CDRF is _____ who can be reached at
_____.

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